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Dedication of Revenue: Fees for Uniform Construction Code Enforcement

The Department of Community Affairs has become aware of instances where municipal construction code enforcement offices are consistently earning revenue well in excess of the offices' operating costs. This Notice, issued jointly by the Division of Local Government Services and the Division of Codes and Standards, reminds municipalities with construction code enforcement offices of fee limitations set forth in State law and how fee proceeds must be budgeted and accounted for. The within guidance also applies to any county that operates a construction code enforcement agency.

Expenses that Construction Code Fees Can Cover

N.J.S.A. 52:27D-126a limits municipal fees for plan review, certificates of occupancy and issuance of construction, demolition, moving of building, elevator, and sign permits to only the level necessary to satisfy the enforcement agency's annual operating costs. Regulations promulgated by the Commissioner of DCA, specifically N.J.A.C. 5:23-4.17 and 4.18, set forth detailed parameters governing municipal construction code fees.

The fee schedule set by municipal ordinance must be calculated to reasonably cover the municipal costs of enforcing the regulations, and shall be reviewed against the revenues and expenditures listed in the Uniform Construction Code Annual Report along with the accompanying recommendation from the construction code official on whether changes to the fee schedule are necessary.

Subsection (c) of N.J.A.C. 5:23-4.17 strictly limits which costs can be utilized in calculating construction code enforcement fees. Those costs set forth in detail under Appendix "A".

Please note that indirect and overhead expenses charged to construction code fee revenues shall not exceed 12 percent of all other costs of the enforcing agency unless the indirect and overhead expenses of the municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged to construction code

fee revenues in proportion to the general municipal overhead and expense ratio. A detailed written justification for any charge for indirect and overhead expenses in excess of 12 percent must be prepared and made available for inspection both by the Department of Community Affairs and by the public.

If the municipality deposits UCC fee revenue into a trust fund (“dedication by rider”), fees may be set at such a level so as to accumulate a reasonable level of funds for offsetting future code enforcement expenses. It is recommended that a three-year average be used for projecting a “reasonable” level of future expenses. See the “Budgeting and Accounting” section below for further discussion on dedicating construction code fee revenue.

Subsection (d) of N.J.A.C. 5:23-4.17 governs fees for development-wide inspection of homes after issuance of a certificate of occupancy. Municipal construction code enforcement fees are subject to further standards which are detailed in N.J.A.C. 5:23-4.18.

Treatment of Fees in Shared Services or Third-Party Vendor Context

When construction code enforcement is provided under a shared services agreement, one uniform fee schedule shall be applied by all parties to the agreement. Said fee shall be collected by the enforcing agency performing the administration and enforcement of the regulations, with no additional fee required to be paid by an applicant to any municipality or county. The enforcing agency shall maintain financial records showing for each municipality the amounts of money collected and expended.

In instances where private on-site inspection and plan review agencies carry out all of the enforcement responsibilities of the local code enforcement agency, fees cannot exceed the contracted amount the municipality must pay the third-party vendor(s) except to cover additional overhead and other operational costs incurred by the municipality in connection with the administration of code enforcement activities. In instances where private on-site inspection and plan review agencies carry out a portion of the enforcement responsibilities of the local code enforcement agency for one or more disciplines, fee revenue cannot exceed the contracted amount the municipality must pay the third-party vendor(s) and the costs incurred by the municipality in carrying out its enforcement responsibilities as allowed pursuant to N.J.A.C. 5:23-4.17 and as described in this LFN.

Budgeting and Accounting for Construction Code Fees

Revenue earned from construction code enforcement fees must be dedicated to enforcing the UCC. Municipalities can dedicate fee revenue in either one of two ways.

The first method, set forth in N.J.S.A. 40A:4-36, is to state fee revenues in a separate section of the budget according to their respective sources together with the appropriations for the purposes to which such revenues are applicable; with the total of anticipated revenues equaling the total of appropriations. Under this method, current year revenue cannot exceed prior year realized revenue absent documentation supporting the disparity (e.g. amended ordinance to increase fees, substantial increase in the number of inspections).

The second method of dedicating UCC fee revenue is to utilize a “dedication by rider” (i.e. a trust fund) pursuant to N.J.S.A. 40A:4-39. A dedication by rider must be used if the municipality wishes to accumulate funds at a reasonable level for offsetting future code enforcement expenses.

Municipalities with code enforcement offices should ensure they are sufficiently staffed to handle their duties. Although municipalities are not prohibited from using general fund to pay the costs of UCC enforcement when fee revenues are insufficient to cover costs, or when necessary to compensate for work done without fee pursuant to statute or ordinance, municipalities are expected to set fees at a level sufficient to cover the costs of their construction code offices.

The appropriation and expenditure of construction code fee revenues shall be tested annually for compliance with N.J.A.C. 5:23-4.17 as part of the municipal audit. As is the case for municipal court and dog license revenues, a separate [dedicated report](#) shall be included with the annual audit; CFOs shall be responsible for providing their auditors with all information necessary to complete the report. This UCC Enforcement Fee Report shall be included with all municipal audits starting with the 2017 audit (SFY2018 audit for municipalities on a State Fiscal Year budget cycle). Guidance will be forthcoming on how the dedicated report is to be incorporated into the upcoming electronic audit submission process (the FAST system).

By no later than March 1 each year (September 1 for SFY municipalities), the Department of Community Affairs will notify a municipality whether they are required to perform further sample testing of the supporting expenditures for all direct and indirect expenses allocated to the Construction Department. This testing should provide support to validate the appropriateness of the charges as they relate to compliance with N.J.A.C. 5:23-4.17, namely that all expenditures of construction code fees have been made for purposes permitted under the regulation. The outcome of said testing shall be specifically reflected as a separate opinion contained in an addendum to the annual Audit. The CFO is responsible for providing the auditor with all necessary supplemental supporting information.

Approved: Timothy J. Cunningham, Director, Division of Local Government Services
Edward M. Smith, Director, Division of Codes and Standards

Document	Internet Address
Subchapter 4 of <u>N.J.A.C. 5:23</u>	http://www.nj.gov/dca/divisions/codes/codreg/pdf_regs/njac_5_23_4.pdf
UCC Annual Report (pdf)	http://www.nj.gov/dca/divisions/dlgs/resources/fa_docs/UCC%20Annual%20Report%20Online.pdf
UCC Annual Report Login	http://fs2.formsite.com/njdca/uccrpt/form_login.html
UCC Report (Annual Audit)	http://www.nj.gov/dca/divisions/dlgs/resources/fa_docs/UCC%20Annual%20Audit%20Report.docx

APPENDIX**Calculating UCC Enforcement Fees – Permissible Costs under N.J.A.C. 5:23-4.17**

- Salaries and employee benefits for licensed code enforcement officials and inspectors and clerical personnel assigned to the enforcing agency¹, in an amount proportionate to the time spent in performing work for the enforcing agency. Detailed time records must be kept where employees divide their time between Uniform Construction Code and Non-Uniform Construction Code duties.
- Cost of motor vehicles in an amount proportionate to their use by or for the enforcing agency. Payments for this purpose may be in the form of
 - mileage reimbursement paid to employees for use of their own motor vehicles
 - cost of purchase of motor vehicles by the municipality for the exclusive use of the enforcing agency (which cost may not be amortized)
 - depreciation and operating expenses of motor vehicles made available to the enforcing agency by another municipal agency, and
 - cost of rental of motor vehicles for use by the enforcing agency
- Direct costs in support of the agency such as equipment, supplies, furniture, office equipment maintenance, standardized forms, printing, and safety equipment that are supplied directly to the enforcing agency for its sole use
- Professional expenses of enforcing agency personnel that are directly related to the enforcement of the regulations, including publications, membership dues, license fees, and authorized travel to conferences, meetings and seminars
- Fees for services performed under contract by private on-site inspection agencies
- Documented charges for legal services connected to construction code enforcement litigation
- Fees for the annual audit of the dedicated fund by an independent auditor
- Indirect, overhead, and other expenses of the municipality in support of the enforcing agency, including:
 - Legislative and Executive expenses (e.g. administrative warrants; appeals to construction board of appeals)
 - Administration, including personnel, payroll, and general training services provided to the agency in common with all other municipal offices;
 - Central services shared jointly with other municipal offices, such as telephone, reproduction, centralized computer services, etc.;
 - Insurance except for group insurance premiums under employer fringe benefits;
 - General building maintenance expenses;
 - Finance, including bookkeeping, purchasing, and auditing;
 - Office space expenses, including rent or interest and debt service on municipal capital facilities; and
 - Such other expenses as may be properly allocable to construction code enforcement.

¹ Please note that all references to the “enforcing agency” pertain to the department, division, or office of the municipality that effectuates code enforcement responsibilities (including entities that provide code enforcement through a shared service agreement or as a private third-party provider), and not the municipality as a whole.